

STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

James A. Dodrill
Insurance Commissioner

July 9, 2021

The Honorable Mac Warner
West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

Re: Comments Received Regarding 114 CSR 103

Dear Secretary Warner,

During the public comment period for the above-referenced Legislative Rule relating to bail bondsmen in criminal cases, the Offices of the Insurance Commissioner (OIC) of the Department of Revenue received one email regarding the proposed rule from Mitchell Barton, an agent for Atkinson Bonding in Parkersburg, WV. Mr. Barton is also a licensed, private investigator. Mr. Barton's email, and the OIC's response thereto, is attached.

Of note, the subject line of Mr. Barton's email was titled "Public Comment on proposed rule re: Bail Bondsman in Criminal Cases." However, the content of the email was a series of questions to the OIC regarding the applicability and implementation of House Bill 2758 (2021) and the proposed corresponding rule, as opposed to a traditional public comment discussing the merits of the proposed rule. Nevertheless, Mr. Barton's email resulted in a careful reconsideration of certain provisions of the rule and, while the OIC has not changed the general substantive requirements set forth therein, it has edited three sections of the rule for clarity.

Specifically, revisions to section 2.1 were made to better clarify the OIC's position that an agent, clerk or representative of a bail bondsman must only have a power of attorney if he or she is issuing bonds on behalf of the licensed bail bondsmen. As such, the OIC will propose amending the language in section 2.1 to state:

"Agent," "clerk" or "representative" of a bail bondsman means a person employed by a bail bondsman for the purpose of assisting the bondsman in presenting a defendant in court or, if a power of attorney has been duly executed, issuing bonds on behalf of the licensed bondsman.

Mr. Barton also had questions concerning sections 5.2 and 5.4 of the rule, which are based upon W.Va. Code § 51-10-5. The OIC will propose the following revisions to section 5.2 to track the statute corresponding statute more closely:



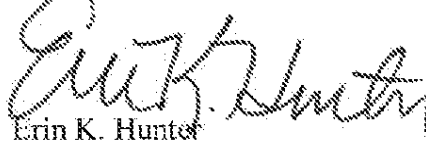
A bail bondsman, or any agent, clerk or representative thereof shall not, either directly or indirectly, charge, accept or receive any sum of money, or other thing of value, other than the authorized bonding fee from any person for whom he or she has posted or executed bond, for any other service whatsoever performed in connection with any indictment or charge upon which said person is bailed or held in the State of West Virginia.

Lastly, the OIC will propose the following revisions to section 5.4 to track the corresponding statute more closely:

A bail bondsman, or any agent, clerk or representative thereof, shall not settle, attempt to settle, procure, or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the State of West Virginia, with any court, prosecuting attorney or police officer.

The OIC would like to thank Mr. Barton for his submitted comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Erin K. Hunter", is written over the typed name.

Erin K. Hunter
Deputy Commissioner and General Counsel
West Virginia Offices of the Insurance Commissioner

Attachments

Hunter, Erin K

From: Hunter, Erin K
Sent: Wednesday, June 30, 2021 11:53 AM
To: Mitchell Barton
Subject: RE: [External] Public Comment on proposed Rule re: Bail Bondsman in Criminal Cases
Attachments: HB2758 SUB ENR.pdf

Mitch,

Thanks for your email and questions. Unfortunately, as attorneys for the Insurance Commissioner, we cannot provide legal advice to outside parties. However, I want to draw your attention to House Bill 2758 which passed the Legislature during the 2021 Legislative Session. I have attached it for your review. This bill transferred regulatory authority over bail bondsmen from the WV Supreme Court to the Offices of the Insurance Commissioner effective July 1, 2022. This was not a piece of legislation that our agency requested, but something that the legislative sponsors pursued in hopes of making the regulation of bail bondsmen more uniform across the state. The legislation requires the Insurance Commissioner to license bail bondsmen in West Virginia, to keep a list of all licensed bondsman, and also requires the Insurance Commissioner to propose rules to specify the qualifications that a person must have when applying to be a bondsman, and the terms and conditions upon which the bonding business may be conducted. As such, we have proposed the rules you refer to for legislative consideration during the next legislative session in 2022. Once the new code sections go into effect, and the corresponding rule in its final form is passed, our licensing folks will be happy to assist all applicants and licensees in making sure they are in compliance with the new law and licensing requirements.

In regard to your inquiries about what a bondsman may do outside of the bondsman business, I would direct your attention to W.Va. Code 51-10-5, which is current law and states:

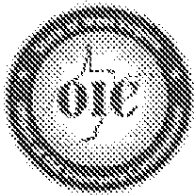
It shall be lawful to charge for executing any bond in a criminal case in the State of West Virginia, and it shall be unlawful for any person or corporation engaged in the bonding business, either as principal, or clerk, agent or representative of another, either directly or indirectly, to charge, accept, or receive any sum of money, or other thing of value, other than the bonding fee from any person for whom he has executed bond, for any other service whatever performed in connection with any indictment or charge upon which said person is bailed or held in the State of West Virginia, or in any counties where the court has regulated bonding fees pursuant to section eight of this article, it shall be unlawful for any person or corporation engaged in the bonding business, either as principal, clerk, agent, or representative of another, either directly or indirectly, to charge, accept, or receive any sum of money or other thing of value other than the duly authorized maximum bonding fee, from any person for whom he has executed bond, for any other service whatever performed in connection with any indictment or charge upon which said person is bailed or held in the State of West Virginia. It also shall be unlawful for any person or corporation engaged either as principal or as agent, clerk, or representative of another in the bonding business, to settle, or attempt to settle, or to procure or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the State of West Virginia, with any court, or with the prosecuting attorney, or with any police officer in any court in the State of West Virginia.

The rule provisions you reference generally relate back to this code section. You should consult with your own counsel as to whether or not your current activities in assisting clients or acting as a private investigator violate this section of the law as it exists today.

I hope this helps.

Thanks,

Erin



Erin K. Hunter

Deputy Commissioner/General Counsel

West Virginia Offices of the Insurance Commissioner

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Please Note New Extension and New Direct Dial Phone Number

NOTICE: This email is intended for the named recipient(s) only. It may contain confidential and privileged information. Unauthorized viewing or use is prohibited. If you have received this email in error, please permanently delete it and notify sender of the same.

From: Mitchell Barton <bartoninvestigations@gmail.com>

Sent: Thursday, June 24, 2021 5:40 PM

To: Hunter, Erin K <Erin.K.Hunter@wv.gov>

Subject: [External] Public Comment on proposed Rule re: Bail Bondsman in Criminal Cases

CAUTION: External email. Do not click links or open attachments unless you verify sender.

Good afternoon, Erin.

My name is Mitchell Barton, and I am an agent for Atkinson Bonding located in Parkersburg. Georgiana Atkinson is the owner of Atkinson Bonding, and she asked me to send some questions/comments. First, Georgiana is a "self-insured" bondsman, meaning she uses her personal property as the security for the bonds that are written, which makes her somewhat different from other bonding companies who have an Insurance company as their security. Therefore, these questions primarily pertain to the self-insured aspect of the proposed rule.

I will ask each question by referencing the section number wherein our confusion stems from.

Section 2.1 - Does every agent, who works for Atkinson Bonding, have to execute a power of attorney before they can sign any bonds?

Section 5.2 - This question pertains to me, personally. In addition to working for Atkinson Bonding, I am also a licensed Private Investigator and I often perform work for attorneys on criminal defense cases. The last sentence under section 5.2, says "Nor shall a bondsman perform any other service whatsoever in connection with any indictment or charge

upon which said person is bonded in this State." My question is this, if we have a person on bond, as a Private Investigator, am I allowed to do any work on that person's criminal defense case if their attorney asks me to, or am I prohibited from performing my other job?

Section 5.4 - As a matter of routine, we try to help our clients at every step of their legal journey, from the time we bond them and until their case is disposed of. Sometimes we act as a liaison between our client and the court system to make sure they are being treated fairly and equitably. In doing so, sometimes we provide non-confidential information to their attorney and have even spoken on their behalf at their sentencing to help them get an alternative sentence, compared to prison. Under this proposed rule, would we be prohibited from trying to help our client in such ways?

A few general questions:

1. Currently, each bonding company has to be approved to operate in each judicial circuit they chose to work in, and each Circuit Clerk maintains a list of the approved bondsman for that circuit. When this bill goes into effect, will each judicial circuit have their own list of bondsmen, or will each circuit have a master list of all approved bondsmen in the entire state, and the people arrested have to call around to find someone local who wants to bond them out?
2. Currently, in each judicial circuit the Circuit or Chief Circuit Judge has oversight of bondsmen. When this bill goes into effect, who will have direct oversight of bondsman or bonding issues at the local level? If no one, then do we contact the Insurance Commissioner when there is a local problem?

Thank you for your time and attention to this matter. If you have any questions feel free to reach me directly at 304-834-0442 or Georgiana Atkinsons directly at 304-615-5555.

Mitch